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# REPORT

OF THE

COMMITTEE OF THE OVERSEERS

OF

HARVARD COLLEGE,

APPOINTED TO CONSIDER AND REPORT UPON THE EXPEDIENCY OF PETITIONING  
THE LEGISLATURE TO PASS A LAW AUTHORIZING

THE PERMANENT SEPARATION OF THE THEOLOGICAL SCHOOL

FROM THE UNIVERSITY.

SUBMITTED JANUARY 28, 1858.

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BOSTON:

GEO. C. RAND & AVERY, PRINTERS.

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IN BOARD OF OVERSEERS OF HARVARD COLLEGE,  
*March 26, 1857.*

*Ordered,* That Rev. GEORGE W. BLAGDEN, Hon. E. R. HOAR, and Hon. EMORY WASHBURN, be a Committee to consider and report on the expediency of petitioning the Legislature of the Commonwealth to pass a law authorizing the permanent separation of the Theological School from the University.

Attest :

NATHANIEL B. SHURTLEFF,  
SECRETARY.

## R E P O R T.

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At the Annual Meeting of the BOARD OF OVERSEERS OF HARVARD COLLEGE, held in the Senate Chamber, in Boston, on the twenty-eighth day of January, 1858, His Excellency Governor BANKS presiding, the Rev. GEORGE W. BLAGDEN, Chairman of a Special Committee appointed to consider and report upon the expediency of petitioning the Legislature to pass a law authorizing the permanent separation of the Theological School from the University, stated to the Board that the Committee had been unanimous in a Report drawn up by one of their number, (Hon. E. R. HOAR.) Whereupon Hon. Mr. HOAR read as follows.

To THE HONORABLE AND REVEREND  
BOARD OF OVERSEERS OF HARVARD COLLEGE:—

YOUR COMMITTEE, APPOINTED AT THE MEETING OF THE BOARD ON THE 26TH DAY OF MARCH, A.D. 1857, "TO CONSIDER AND REPORT UPON THE EXPEDIENCY OF PETITIONING THE LEGISLATURE TO PASS A LAW AUTHORIZING THE PERMANENT SEPARATION OF THE THEOLOGICAL SCHOOL FROM THE UNIVERSITY," HAVE ATTENDED TO THAT DUTY, AND BEG LEAVE TO REPORT:

That it has been already decided, by the unanimous vote of the President and Fellows of Harvard College, and by the unanimous vote of the Board of Overseers, that in the opinion of the Corporation and of the Overseers it is expedient that a Theological School should no longer be maintained

as a department of the University at Cambridge. The Supreme Judicial Court have decided that they cannot, in the proper exercise of any chancery powers they possess, upon the petition of the President and Fellows, and with the consent of the Board of Overseers, direct or authorize the withdrawal of the funds which have been entrusted to the Corporation for the support of theological education in the University, or for the purpose of maintaining a theological school, as a branch of the University, and commit them to an independent board of trustees, to be appropriated to maintaining a separate theological school.

The question is then submitted to our consideration, whether this object can be attained, and this defect of power remedied, by the aid of the Legislature.

By the existing laws of the Commonwealth any private person, who has accepted a trust under a will, can resign that trust, with the consent of the Court of Probate, whatever may be the object of the trust, and another trustee may be appointed in his place.

The legal ownership of all the property appropriated to the use of the University, in all its departments, is vested in the Corporation. The powers of the Corporation, acting with the concurrence and assent of the Overseers, in such matters as by the charter require the concurrent action of this Board, are as extensive in their nature as those of any trustee, for the purpose of executing the important and diversified trusts to which that

property has been applied by its successive and various donors. Whatever can be lawfully done by any corporation, entrusted with the management of a public charity, can be done by the President and Fellows of the College, with the consent of the Board of Overseers.

The general power to regulate and enforce the execution of trusts, whether of a public or private nature, to supply trustees where it is necessary to prevent a failure of the trust, and even to modify the application and disposition of trust funds in order more effectually and better to conform to the will and intent of their donors, is conferred upon the Supreme Court.

The general power to legislate for the public welfare, to create, increase, or diminish corporate powers, so far as it can be done without disturbing or violating rights of property or contracts protected by the constitution, and of representing and caring for the interests of unknown and future objects of public charity, where unforeseen changes of circumstances, which have not been provided for, render it necessary and proper that some one should represent and care for them, resides in the Legislature.

The question, then, seems to present itself in a double aspect,— First, in respect to the custody and ownership of property,—

Whether a corporation, by virtue of its perpetuity, so differs from an individual that it is by law obliged forever to continue to hold property which it has once accepted in trust, and that no power in

the State can rightfully discharge it from such obligation, and allow it to resign the trust ; so that the Corporation of the College must always continue the trustee of property once received by it.

And secondly, as to the uses to which the property is devoted ; —

Whether, if the College or its managers, at one period of its existence, have determined that a particular branch of study can profitably be pursued in its course of studies, and have accepted funds in trust for the promotion of that branch of study, no power in the State can ever absolve it from the obligation to continue that branch of study in its course, however useless, or pernicious, or inconsistent with the general design and objects of the institution such continuance may afterward become, and although it has faithfully applied the funds, and is ready to surrender them unimpaired.

It is apparent that if an Act of the Legislature, authorizing the Supreme Judicial Court, upon the petition of the Corporation with the assent of the Overseers, to pass a decree allowing the President and Fellows to resign the trust which they have assumed, and to commit the funds to another trustee, would not be effectual, there is no mode in which a separation of the Theological School from the University can be accomplished. It would follow, that the present and succeeding generations must continue to be bound by a disposition of property made by a preceding generation, notwithstanding any change in circumstances which could not have been, or was not, foreseen ; and that the

continuous identity of a corporation would oblige it forever to execute a trust, once accepted, so long as it continued physically capable of execution, however incompatible its execution might be with the proper discharge of other duties, of equal obligation, and with the proper execution of other trusts.

Your Committee do not believe that any such incapacity or disability exists. They are of the opinion that it is competent for the Legislature, representing the public interest, and the interests of future and unknown beneficiaries, and entrusted with the care of whatever concerns the common good, to authorize a trustee, charged with the administration of a public charity, to resign the trust, whether the trustee be an individual or a corporation; and that it is especially proper that this power should be exercised, when it applies to the case of a trustee, having assumed in good faith successive trusts, which in the opinion of the trustee and of the Legislature have become subsequently and without fault of the trustee to any extent incompatible, and where the trust has been faithfully executed, and the property belonging to it remains unimpaired.

Your Committee would not recommend an application to the Legislature for their intervention in relation to the management of trusts, upon any ordinary occasion, or upon any slight grounds. Nor would we invoke the exercise of their authority directly, in a matter which is and ought to be of judicial consideration. The power of regulating

trusts, enforcing their execution, and determining the extent of the rights, responsibilities, and duties of trustees, is wisely deposited with another department of the government. The active interference of so changeable a body as the Legislature, using its power with such limited personal responsibility, and acting under influences often temporary in their nature, may well be deprecated, in regard to a subject so delicate, and involving interests so vast and so varied. We are aware that anything which disturbs the sense of stability, of permanence, in the administration of trusts, or the disposal of trust funds, by exciting the suspicion that they may become subject to the caprices or the interests of partizans, or be made dependent upon the fluctuations of political opinion, or the impulses of sectarian zeal, tends to destroy that confidence in the security of bequests and benefactions for public objects which it is so important to preserve in the minds of owners of property, and so to dry up at once and forever the great sources of public charity.

But your Committee believe that the present case is a peculiar one, in the condition in which it is placed by the judicial decision to which we have referred; and we think that all that need be asked of the Legislature is, to confer upon the courts a power which they have already conferred in cases strictly analogous; to enable the courts to permit a corporation to do what may now be lawfully done by a private person in like circumstances.

Our recommendation would go no farther than to ask the Legislature to confer the authority upon

the Supreme Judicial Court, to permit the President and Fellows of Harvard College, with the consent of the Overseers, to resign a trust, which, in the judgment of those bodies, can no longer be executed by the Corporation consistently with a due regard to the great objects for which that Corporation was created, and to the best discharge of other duties of equal obligation and of greater magnitude; and to provide for the future maintenance and execution of that trust through other agencies, but without in any degree impairing its validity, its security, or its efficiency. They would therefore recommend the adoption of the following resolutions.

*Resolved*, That it is expedient that the President and Fellows of Harvard College should apply to the Legislature for the passage of an act to authorize and empower the Supreme Judicial Court, upon the petition of the said President and Fellows, with the consent of the Board of Overseers, and upon such notice to all parties interested as said Court shall order, to permit the said President and Fellows to resign the trusts which they have heretofore assumed, or any of them, in relation to all funds which have been entrusted to said Corporation for the support of theological education in the University at Cambridge, or for the purpose of maintaining a theological school as a branch of the University; and to make such orders and decrees as shall be necessary and proper to provide for the management of such funds, and execution of the trusts respecting them, as nearly as possible accord-

ing to the intention of their donors, by such other corporation, or trustees, as said Court shall appoint.

*Resolved*, That

be a Committee to communicate the foregoing resolution to the Corporation, and to confer with them, or with any Committee appointed by them, respecting the same.

Which is respectfully submitted by

G. W. BLAGDEN,  
E. R. HOAR,  
EMORY WASHBURN, } Committee.

January 28, 1858.

IN BOARD OF OVERSEERS OF HARVARD COLLEGE,  
*January 28, 1858.*

The foregoing Report was read and accepted, and the resolutions adopted; and a Committee, consisting of Rev. GEORGE W. BLAGDEN, Hon. EMORY WASHBURN and Hon. THOMAS RUSSELL, was appointed in accordance with the last resolution.

*February 11, 1858.*

Rev. DR. BLAGDEN, from the Committee appointed to confer with the President and Fellows, or a Committee of that body, upon the subject of the separation of the Theological School from the University, reported that they had met a Committee of that body, who were clothed with full power to go forward and present the subject to the Legislature. But in consequence of not having similar authority from the Board of Overseers, the Committee could proceed no further. Whereupon it was

*Ordered,* That a Committee of this Board, consisting of Messrs. BLAGDEN, WASHBURN and RUSSELL, be appointed to coöperate with the Committee of the Corporation in presenting the subject to the Legislature; and that the Report of the Committee of Conference from the Overseers be printed in pamphlet form.

Attest:

NATHANIEL B. SHURTLEFF,  
*Secretary.*



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